

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

FILED	
DISTRICT OF NEBRASKA	
AT _____	M
JUL 1 1986	
William L. Olson, Clerk	
By _____	Deputy

IN THE MATTER OF)
)
CENTENNIAL COMMUNICATIONS,)
INC.,)
)
Debtor.)
)
CENTENNIAL COMMUNICATIONS, INC.,)
)
Plaintiff,)
)
v.)
)
MARSHALL R. HAMBRIC, et al.,)
)
Defendants.)
)

CV. 85-0-232

BK. 81-2295

A. 84-175

MEMORANDUM AND ORDER

This matter is before the Court on appeal from a final order of the bankruptcy court evidenced by a journal entry dated February 11, 1985 (Adv. Filing No. 27). Through the journal entry, the United States Bankruptcy Judge David L. Crawford denied a motion to amend judgment as to appellant Frank Hambric's counterclaim or in the alternative, for a new trial on the counterclaim. Upon careful review of the record submitted on appeal and the parties' briefs, this Court finds the bankruptcy court's decision should be affirmed.

On June 28, 1984, debtor Centennial Communications, Inc., (Centennial) filed a complaint before the bankruptcy court seeking, in part, the turn over by defendants of certain accounting books and records on the debtor pursuant to 11 U.S.C. § 542(e) (Adv. Filing No. 1). Thereafter, the Hambrics filed an answer and counterclaim (Adv. Filing No. 7). Therein, the

appellants claim they had a valid possessory lien on the debtors' books and records under the provisions of Section 38-21-101 of the Colorado Revised Statutes. Additionally, Frank Hambric asserted a counterclaim seeking recovery of the sum of \$32,336.68 representing accounting services and expenses provided Centennial by him from 1981 to 1984. Judge Crawford refused to compel the document turnover and by judgment filed November 14, 1984, dismissed on the merits Centennial's complaint. The counterclaim was not mentioned in the November 14 judgment.

Before this Court addresses the merits of the appeal, it is prudent to state the general standard of review that guides the Court in matters such as this. On appeal, a district court is not bound by the bankruptcy judge's conclusions of law; however, the bankruptcy judge's findings of fact are entitled to stand unless clearly erroneous. In *re American Beef Packers, Inc.*, 457 F.Supp. 313, 314 (D.Neb. 1978); see also Bankruptcy Rule of Procedure 8013.

Frank Hambric raises the following two issues on appeal:

(1) Whether defendant Frank Hambric is entitled to a judgment on his counterclaim;

(2) Amount defendant Frank Hambric is entitled to on his counterclaim.

While it is true that the bankruptcy court order filed November 14 did not specifically address Frank Hambric's counterclaim, his request for compensation was addressed by the bankruptcy court during a February 11, 1985, hearing on

appellant's motion to amend judgment, or for new trial. Judge Crawford ruled that he could not compel any payment of money alleged owed by Centennial to appellant because the debtor's Chapter 11 plan had been confirmed and appellant could not participate in it (Tr. 5).

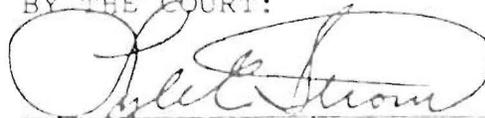
Appellant requests compensation for services rendered to the bankrupt are both pre- and post-petition. Mr. Hambric was required to file a proof of claim pursuant to Bankruptcy Rule of Procedure 3003 for the pre-petition debt. Evidence of such a proof of claim was not presented at trial, and Judge Crawford properly denied appellant's request for compensation.

Much of the post-petition claim appears to be for the employment of a professional person to assist in the administration of the bankrupt's estate. See 11 U.S.C. § 331. Compensation to such an individual is allowed only after he applies to the Court and a hearing is held on the matter. *Id.*; see also 11 U.S.C. § 503. Since Mr. Hambric presented no evidence indicating that the Section 331 procedure had been met, Judge Crawford properly denied appellant's compensation request for post-petition accounting services rendered. Accordingly,

IT IS HEREBY ORDERED that the bankruptcy court's denial of appellant's motion to amend judgment as to the counterclaim or in the alternative for a new trial on the counterclaim is affirmed.

DATED this 1st day of July, 1986.

BY THE COURT:



LYLE E. STROM
UNITED STATES DISTRICT JUDGE